

REMARKS

Claims 1 through 38 are pending in this application.

Requirement for Restriction under 37 C.F.R. §1.141

In Paper No. 20021226, the Examiner required Applicant pursuant to 35 U.S.C. §121 and 37 C.F.R. §1.141, to elect between:

- Group I: a field emission display including electron emission sources, defined by claims 1-17 and 24-38, classified in class 313, at subclass 495; and
- Group II: a method for forming electron emission sources for a field emission display, defined by claims 18-23, classified in class 427, at subclass 77.

The Applicant provisionally elects Group I covering claims 1-17 and 24-38, with traverse.

The Applicant objects to and traverses the election requirement on the grounds that the subject matter of the groups overlap. In addition, the mandatory fields of search for the embodiments are coextensive as shown below.

As specifically stated in MPEP § 803, the examiner must show that the (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP

§806.05 - §806.05(i)); **and** (B) There must be a serious burden on the examiner if restriction is required (see MPEP §803.02, § 806.04(a) -§806.04(i),§808.01(a), and § 808.02).

Clearly as shown below the criteria of MPEP § 803 are not met for a proper restriction requirement.

For example, in group I claims 1-17, 24-38 is said to be drawn to a field emission display including electron emission sources. However, looking at group II, claims 18-23 include certain features of group I and group I has certain features of group II, thereby mandating a search of both classes. Clearly there is no serious burden on the Examiner.

Moreover, the Applicant traverses the requirement and requests re-consideration and withdrawal of the requirement, because all patents and patent applications directed to the subject matter of either Group I or Group II, by statute, must necessarily disclose out to make and use the subject matter disclosed by those patents and patent applications. Consequently, the mandatory field of search for both Group I and II are co-extensive and inherently overlapping in their disclosed details. A search confined solely to one class, without considering the classes directed to other statutory matter, is intrinsically incomplete. Consequently, the Examiner must search the designated subclasses of both class 313 and class 427. Withdrawal of the requirement is therefore requested.

Therefore, respectfully, as shown above and according to MPEP §803, it is clear that the restriction of the present application is improper and creates no serious burden on the Examiner.

Rejoinder of Withdrawn Claims

According to MPEP §821.04 in the *In re Ochiai* rejoinder, even when there is even a proper restriction between product and process claims and when the product claims are elected, and the product claims are allowable, the process claims that include all the limitations of the allowable product claims would also be allowable.

Therefore, claim 18-23 can be allowed because of rejoinder under MPEP §821.04 when the product claims are allowed and include all the limitations of the allowable product claims of any one of claims 1-17, or 24-38 are allowed.

In view of the foregoing election, this response is believed to be a complete response to the Restriction Requirement. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

No fee is incurred by this Response. Should there be a deficiency in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,



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